

MINUTES

MONTANA SENATE 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN LORENTS GROSFIELD**, on March 19, 2001
at 10:00 A.M., in Room 303 Capitol.

ROLL CALL

Members Present:

Sen. Lorents Grosfield, Chairman (R)
Sen. Duane Grimes, Vice Chairman (R)
Sen. Al Bishop (R)
Sen. Steve Doherty (D)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Walter McNutt (R)
Sen. Jerry O'Neil (R)
Sen. Gerald Pease (D)

Members Excused: None.

Members Absent: None.

Staff Present: Valencia Lane, Legislative Branch
Anne Felstet, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 424, HB 419, 3/14/2001
Executive Action: None

HEARING ON HB 424

Sponsor: REP. KEN PETERSON, HD 20, BILLINGS

Proponents: REP. MARK NOENNIG, HD 9, BILLINGS
Jerry Loendorf, MT. Medical Association
Bob Lenia, President of MT. Medical Assoc.
Dr. Jack McMahon, Medical Director, Mountain
Pacific Health Foundation
Steven Ertelt, Executive Director, MT. Right to
Life
Susan Good, Allied Citizens for Healthcare Equity
Al Smith, MT. Trial Lawyers Association
Sammie Butler, MT. Nurses Association
Dr. Donald Harr, MT. Psychiatric Association
Jim Smith, MT. Pharmacy Association
Clyde Daly, Associate State Director, A.A.R.P.

Opponents: Dr. Joseph Knapp, MT. Health Board
Page Dringman, MT. Health Association of America
Steve Turkiewicz, Secretary, M.E.D.A. Insurance
Trust
Dr. Tom Thignpen, Medical Director, Yellowstone
Community Health Plan
Adrian Mryhe, MT. Chamber of Commerce
Tonya Ask, Blue Cross & Blue Shield of MT.
Tom Ebzery, St. Vincent Healthcare
Patrick Heffernan, Staff Forester, MT. Logging
Association
Anita Bennett, Member Services Director, MT.
Logging Assoc.
Dr. Richard Sargeant, Helena Health Alliance
Casey Clarke, RN, New West Health Services
Steve Okery, Medical Director, MT. Care
Riley Johnson, NFIB
Jacqueline Lenmark, American Insurance Association
Spook Stang, MT. Motor Carriers Association
Brad Griffin, MT. Retail Association
Don Allen, MT. Benefits to Life
Stuart Doggett, MT. Comprehensive Health Assoc.
John Cadby, MT. Bankers Association

Opening Statement by Sponsor:

REP. KEN PETERSON, HD 20, BILLINGS, opened on HB 424 stating the bill imposed upon health maintenance organizations and health carriers. He pointed to page four and explained ordinary care

versus standard care. He explained healthcare units and the procedure involved to go through the Montana Legal Panel. He believed Montana citizens needed patient protection and this bill would not allow administrative staff in maintenance organizations to make the healthcare decisions. He referred to articles from other states dealing with incidences on medical malpractice cases and pointed out statistics. He felt this law would offer patients additional rights.

Proponents' Testimony:

REP. MARK NOENNIG, HD 9, BILLINGS, explained a personal experience with healthcare treatment. He believed this bill would assist in offering rights to patients and assist in making healthcare treatments.

Jerry Loendorf, MT. Medical Association, said this bill required managed care organizations to be responsible for their healthcare treatment decisions. This bill dealt with decisions concerning the patient's healthcare and it would offer responsibility to the organizations who administer the patient's health.

Bob Lenia, President of MT Medical Association, explained his membership on boards and how they viewed patient's rights. He mentioned problems and issues in other areas.

{Tape 1; Side B}

Dr. Jack McMahon, Medical Director of Mountain Pacific Quality Health Foundation, gave an example of a patient and how the medicaid program would be involved. He described the use of ordinary care and the effects it would have through this bill. He explained how an organization could become liable through healthcare decisions that were made for patients. He mentioned an amendment brought forward by Blue Cross and Blue Shield.

Steven Ertelt, Executive Director, MT. Right to Life, handed in his testimony **EXHIBIT(jus62a01)**.

Susan Good, Allied Citizens for Healthcare Equity, believed patients should receive care that was responsible and accountable. She mentioned issues dealt with daily and said insurance companies should be held liable for the medical decisions being made.

Al Smith, MT. Trial Lawyers Association, handed in examples of HMO Immunity **EXHIBIT(jus62a02)**, a cartoon **EXHIBIT(jus62a03)** and a monthly report **EXHIBIT(jus62a04)**. He heard from customers and patients frequently regarding this issue and explained the

federal law that preempted what states could do. He said there should not be any increase in rates. He didn't feel currently there was any justice for patient's rights.

Sammie Butler, MT. Nurses Association, said nurses were accountable and responsible for the decisions made and she felt it was logical that organizations be held on the same standards. She urged support of this bill.

Dr. Donald Harr, MT. Psychiatric Association, recognized many individuals received treatment and how this bill would effect their rights. He requested the committee to demonstrate support of this bill.

Jim Smith, MT. Pharmacy Association, said he wasn't always allowed to dispense medications that were prescribed by the physician. He asked for support of this bill.

Clyde Daly, Associate State Director, A.A.R.P., felt this bill added leverage for the patient's rights and managed care decisions. He urged support of this legislation.

Opponents' Testimony:

Dr. Joseph Knapp, MT. Health Board, submitted an article from Business Week **EXHIBIT(jus62a05)**. He explained other states review of managed care and liability provisions following mandated review. He said peer review was the preferred approach in resolving disputes by the medical community. Montana's managed care was a locally grown product existing by New West, Montana Health, Montana Care, Western Montana Clinic, and Blue Cross/Blue Shield. He mentioned liability costs and the unfairness this legislation would add if passed. He felt this bill would not give cheaper health insurance and it would have a potential to pricing medical facilities out of the market place.

Page Dringman, MT. Health Association of America, handed out a report **EXHIBIT(jus62a06)**. She also submitted information regarding unforeseen consequences **EXHIBIT(jus62a07)**. She addressed there was no remedy with the current health carrier, but there was contract liability and Unfair Trade Practices, which covered bad-faith. She explained review of contracts and the concerns dealing with payment or treatment decisions. She stated medicaid would be specifically exempt from this law and she gave the example of Texas law being petitioned in court.

Steve Turkiewicz, Secretary, M.E.D.A. Insurance Trust, mentioned the balance between patient protection and affordable healthcare. He explained the premium structures and how health insurance was

raised through the employers, employees, and families. He urged a do not pass on this legislation.

{Tape 2; Side A}

Dr. Tom Thingpen, Medical Director, Yellowstone Community Health Plan, opposed this bill because he felt it to be unnecessary adding costs to members on the health plan. He explained the years of service he had done. He asked consideration of opposition to this legislation.

Adrian Mryhe, MT. Chamber of Commerce, talked about benefits and the increase of premiums due to this type of legislation. She felt by limiting benefits it became a contract decision. She shared a personal experience with medical and insurance companies.

Tonya Ask, Blue Cross & Blue Shield of MT., handed in a notebook **EXHIBIT(jus62a08)**. She explained having Montana licensed medical providers through the insurance company. She felt this bill would add to the cost of health benefits for approximately 29% of Montanans, who were uninsured. She gave statistics of insured people within the state and the cost increases.

Tom Ebzery, St. Vincent Healthcare, addressed coverage of patients and healthcare treatment decisions. He mentioned the issue regarding the federal legislation and didn't think liability needed to be deleted and this bill would conflict with that legislation.

Patrick Heffernan, Staff Forester, MT. Logging Association, said many of their members carried medical insurance for the employees. He urged no support of this bill since it would increase costs against members and make insurance unaffordable for their employees.

Anita Bennett, Member Services Director, MT. Logging Assoc., handed in her testimony **EXHIBIT(jus62a09)**.

Dr. Richard Sargeant, Helena Health Alliance, felt this bill added a layer of unexpected costs. He handed in a witness statement **EXHIBIT(jus62a10)**

Casey Clarke, RN, New West Health Services, submitted her testimony **EXHIBIT(jus62a11)**.

Steve Okery, Medical Director, MT. Care, didn't feel there was value in this bill.

Riley Johnson, NFIB, explained the percentage rates increased with his insurance and didn't want this bill to pass increasing more costs.

Jacqueline Lenmark, American Insurance Association, noted the associations she was linked to and the increasing costs this bill would implement.

Spook Stang, MT. Motor Carriers Association, opposed this bill.

Brad Griffin, MT. Retail Association, explained the association's employees' group health plan and said they were opposed to this legislation.

Don Allen, MT. Benefits to Life, pointed out this legislation would affect all healthcare providers.

{Tape 2; Side B}

Stuart Doggett, MT. Comprehensive Health Assoc., was concerned about the additional costs and opposed the bill.

John Cadby, MT. Bankers Association, opposed this bill and asked for a do not pass.

Glen Levitt, Director, Benefits for University System, submitted opposing testimony **EXHIBIT(jus62a12)**.

Questions from Committee Members and Responses:

SEN. RIC HOLDEN asked why this piece of legislation was needed. **Jerry Loendorf, MT. Medical Association**, explained ordinary care and what applied. He said this bill dealt with a managed care organization using ordinary care in making decisions.

SEN. HOLDEN asked what costs this bill would add. **Page Dringman, MT. Health Association of America**, gave examples of health costs involving lawsuits against the insurance companies.

SEN. DUANE GRIMES asked for comments regarding charges not contained in the medical malpractice section of codes. **Mr. Loendorf** said this did not apply to a managed care organization.

SEN. GRIMES asked if the threat of malpractice torts came out with this bill. **Mr. Loendorf** said it make them responsible for healthcare treatment decisions.

SEN. JERRY O'NEIL asked if this bill would be better to include the Children Health Insurance Plan and Montana Comprehensive Healthcare. **REP. PETERSON** mentioned entities the bill would not apply to and added any entity providing healthcare for children were within the ambient of this bill.

SEN. O'NEIL asked why this bill wasn't good for governmental insurance providers. **REP. PETERSON** answered by stating these were taxpayer funded programs and they needed to be made available.

SEN. O'NEIL asked if an amendment could be added to include government care insurance programs. **REP. PETERSON** didn't know what the effect would be.

SEN. O'NEIL asked if insurers under the IRSA plan were able to sue their insurer currently. **Al Smith, MT. Trial Lawyers Association**, explained what IRSA covered and added the cost of treatment that was denied to them in the first place, would be awarded.

SEN. O'NEIL asked if the state agency was insured and what policy they fell under. **Mr. Smith** said state and local government plans were not preempted by IRSA.

SEN. O'NEIL asked how the bill would effect the current law. **Mr. Smith** said the legislature could add restrictions to the Constitution.

SEN. GRIMES asked about the peer review process and if it was the same as the Unfair Trade Practices Act. **Dr. Joseph Knapp, MT. Health Board**, explained peer review and the structured organization process it went through.

SEN. O'NEIL asked if this bill would overturn the current appeals process. **Dr. Knapp** answered no, it would not.

SEN. GRIMES asked if the prescriptions were generic or was it due to pharmacists changing the medication. **Jim Smith, MT. Pharmacy Association**, replied by saying it was generic prescriptions.

SEN. GRIMES asked if it would present a problem by substituting medication. **Mr. Smith** said it would make it less expensive and he explained the costs decreased pertaining to generic prescriptions.

SEN. GRIMES asked if a medical issue was involved with the pharmacist's use of a correlating drug, would the physician deal

with it. **Dr. Richard Sargeant, Helena Health Alliance**, answered yes. He explained the signing under generic substitution.

{Tape 3; Side A}

SEN. MIKE HALLIGAN asked if any court decisions were involved.

REP. PETERSON said there had been litigation in Texas. He mentioned the review system in place with this bill.

SEN. HALLIGAN asked if this was a parallel definition with the Texas statute. **REP. PETERSON** answered it was modeled after the Texas statute.

SEN. GRIMES asked how rates would increase. **REP. PETERSON** commented by saying the statistics were projected and not actual.

SEN. GRIMES asked for a response on the projected increases. **Tonya Ask, Blue Cross & Blue Shield of MT.**, said the congregational budget office numbers were projections and the Arizona numbers were actual numbers.

SEN. GRIMES asked what decisions managed care organizations were making. **Ms. Ask** said the types of decisions laid out within this bill would become a matter of dispute. She gave examples of services rendered and the decisions made.

SEN. GRIMES questioned how decisions would be made due to a patient's background and if it would put the insurer in a liable situation. **Ms. Ask** said one situation would deal with a patient and something happened during the hospitalization. Another situation would deal with complications of the patient extending the stay and adding to the decision made.

SEN. GRIMES wondered if a patient, who had complications due to the number of days hospitalized, would be through a treatment decision. **Ms. Ask** answered it would be a possible threat of additional liability to the insurance carrier if they denied benefits of the patient.

SEN. GRIMES asked if Blue Cross Blue Shield used ordinary care. **Ms. Ask** answered they used ordinary care as it applied to a coverage decision.

Closing by Sponsor:

REP. KEN PETERSON, closed on **HB 424** by stating this bill would add responsibility of the organization making a medical decision. He expressed the understanding of ordinary care and said this

bill did not apply if the healthcare maintenance organization or the carrier did not make a healthcare decision. He felt this bill was straightforward and he encouraged a do concur motion.

HEARING ON HB 419

Sponsor: REP. JIM SHOCKLEY, HD 61, VICTOR

Proponents: Jeff Hagener, Director, MT. Fish Wildlife & Parks
John Connor, Department of Justice

Opponents: None

Opening Statement by Sponsor:

REP. JIM SHOCKLEY, HD 61, VICTOR, opened in HB 419, saying this bill offered a half-time position to the attorney general to prosecute the fish and game cases. He said there was a problem dealing with the written code that came from fish and game. He explained fish and game cases and gave examples.

Proponents' Testimony:

Jeff Hagener, Director, MT. Fish Wildlife & Parks, handed in his testimony **EXHIBIT** (jus62a13).

John Connor, Department of Justice, explained his bureau would be the recipient of the half-time position. He believed this bill would work and he talked about the assistance needed. He referred to the fiscal note and explained the budget and billing out of time.

{Tape 3; Side B}

Opponents' Testimony:

None

Questions from Committee Members and Responses:

CHAIRMAN LORENTS GROSFIELD asked if the fiscal note was too small. John Connor, Department of Justice, felt the fiscal note would contemplate the person's time would be billed.

CHAIRMAN GROSFIELD asked if the fiscal note was too small for a half time person. Mr. Connor answered no, it might be too large.

CHAIRMAN GROSFIELD asked where the money was coming from. **Bob Lane, Chief Legal Council, MT. Fish Wildlife & Parks**, explained the money would come out of the general licensed account.

CHAIRMAN GROSFIELD asked if they could take from the account without jeopardizing general funds. **Mr. Lane** answered yes, they could do that. He said it would be for the department and it was the same as they pay attorneys for legal work in the office.

SEN. JERRY O'NEIL asked if the legal office was not capable of handling this type of business. **Mr. Lane** answered yes. He said they were not criminal prosecutors and were not experienced with these type of cases.

Closing by Sponsor:

REP. JIM SHOCKLEY closed on HB 419. He said prosecuting was a specialty and it was hard to be an agency attorney. He felt this bill was needed to assist the department and attorney general. He stated for management purposes this bill fit the criteria needed.

ADJOURNMENT

Adjournment: 12:46 A.M.

SEN. LORENTS GROSFIELD, Chairman

ANNE FELSTET, Secretary

LG/AF

EXHIBIT (jus62aad)